



**Petition Number:** 1606-VS-12

**Subject Site Address:** 14837 Thatcher Lane

**Petitioner:** Hamilton Designs, LLC on behalf of Crew Carwash

**Request:** Variances of Standard to allow for the construction of a canopy structure (Article 6.1(D), Article 6.3(F), and Article 6.8) in the SB-PD: Special Business / Planned Development District.

**Current Zoning:** SB-PD: Special Business / Planned Development

**Current Land Use:** Car wash

**Approximate Acreage:** 1.22 acres+/-

**Exhibits:**

1. Staff Report
2. Location Map
3. Site Plan
4. Elevations
5. Existing Conditions
6. Petitioner's Application

**Staff Reviewer:** Amanda Rubadue, Associate Planner

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## **OVERVIEW**

**Location:** The subject property is 1.22 acres +/- in size and located at 14837 Thatcher Lane (see **Exhibit 2**). The property is zoned SB-PD: Special Business / Planned Development District. Adjacent properties are also zoned the SB-PD District.

**Property History:** Crew Carwash is currently operating a car wash on the property. A car wash is defined as a "High Intensity Retail<sup>1</sup>" use, and is permitted within the SB-PD District. The car wash was initially constructed and began operation in 1998, following the approval of a development plan by the Plan Commission in 1997. Since then, an amended development plan was approved in 2013 to allow ancillary improvements to the property (see **Exhibit 5**).

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<sup>1</sup> Chapter 12 of the UDO defines "Retail, High Intensity" as "[r]etail businesses that have a high impact on neighboring properties, traffic generation, and public safety. Example businesses include, but are not limited to: building finishes store (large), building supply store (large), department store (large), discount store (large), furniture store (large), grocery/supermarket (large), home electronics/appliance store (large), office supplies (large), sporting goods (large), superstore, variety store (large), **auto and motorcycle service uses** (e.g., parts sales, tire sales and/or repair, service garage, rust proofing, storage, **car wash**), pet-oriented businesses (e.g., pet shop, obedience schools, grooming), toy store (large). Generally, a business over twelve thousand (12,000) square feet qualifies as large for purposes of this definition."

Requested Variances: The petitioner desires to construct a detached canopy structure, as generally illustrated on the Site Plan Exhibit (see Exhibit 3) and Elevations Exhibit (see Exhibit 4). In order to accommodate the proposed improvement, multiple variances are required, as summarized herein.

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## **SUMMARY OF VARIANCES**

The petitioner is requesting several variances to accommodate the construction of a detached canopy structure as generally illustrated on the Site Plan Exhibit (see Exhibit 3) and Elevations Exhibit (see Exhibit 4). The detached canopy structure is an Accessory Building<sup>2</sup>. In accordance with Article 5.2(L)<sup>3</sup> US Highway 31 Overlay District (the “US31 Overlay”) of the UDO, the use and proposed improvements are exempt from the US31 Overlay standards. As a result, the UDO’s development standards applicable to the SB-PD District and businesses apply to the proposed improvements.

### **Variance #1: Side Yard Setback**

Article 6.1(D)(1)(b)(ii) Accessory Use and Building Standards; Building Location; Lots in Subdivisions; Side and Rear Setback states that “[a]n Accessory Building over two hundred (200) square feet<sup>4</sup> shall meet the minimum Side and Rear Yard Building Setback Lines of the underlying Zoning District...”

Article 4.22(B) SB-PD District; General Standards of the UDO provides the following for the applicable underlying Zoning District: “Developments in this district shall be subject to the requirements and standards of the LB-PD and GB-PD: Business / Planned Development, except where other requirements and standards for this Zoning District are specifically set forth.”

As a result, Article 4.23(F)(2) GB-PD District; Minimum Setback Lines; Side Yard of the UDO applies, which establishes a minimum side yard building setback of fifteen (15) feet.

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<sup>2</sup> Chapter 12 of the UDO defines “Building, Accessory” as “[a] subordinate building or structure, the use of which is incidental to and customary in connection with the Principal Building or use and which is located on the same Lot with such Principal Building or use and is under the same ownership. Buildings which are portable and do not have permanent foundations are also classified as Accessory Buildings, but shall not require an Improvement Location Permit.

<sup>3</sup> Article 5.2(L) of the UDO states “[a]ny alterations to existing buildings or development of additional structures for businesses existing prior to the adoption of Ordinance No. 89-15 (December 11, 1989), or Ordinance No. 00-17 (August 14, 2000), as may be applicable to a subject property, shall be exempt from this Article; however, if an existing business ceases to operate and/or the facility becomes a new type of business, then it shall be subject to the provisions of this Article.

<sup>4</sup> The petitioner’s site plan depicts an 1,100 square foot +/- structure (51’ x 22’).

The petitioner has requested a Variance of Development Standard to reduce the Minimum Setback Line applicable to the north Lot Line (Side Yard) from fifteen (15) feet to six (6) inches.

For context, the existing drive aisle pavement where the canopy will be constructed over, is not proposed to be modified and is currently located six (6) inches from the Lot Line.

**Variance #2: Architectural Standards**

Article 6.3(F) Architectural Standards; Business Districts applies to “[a]ll new nonresidential buildings or additions located within a Business District...”

In reviewing the proposed improvements, the Department identified that the proposed improvements would not comply with the following standards (please see the attached **Exhibit 8** for UDO excerpts):

a) Article 6.3(F)(5)(a) and (b) Building Elevations:

- i. Horizontal Design: All Building Facades<sup>5</sup> shall have a defined base or foundation, a middle or modulated wall, and a top formed by a pitched roof or articulated, cornice or moulding.
- ii. Wall Planes: Building Facades, which are ninety (90) feet or greater in length, shall be designed with offsets (projecting or recessed) at intervals of not greater than sixty (60) feet. Buildings less than ten thousand (10,000) square feet in Gross Floor Area shall be designed with offsets at interval of not greater than forty (40) feet. Offsets shall extend the entire vertical plane of the Building Facade and shall be a minimum depth of four (4) feet and a minimum aggregate length of twenty percent (20%) of the horizontal plane of the overall Building Facade. The offset may be met with setbacks of the Building Facade and/or with architectural elements (i.e. arcades, columns, ribs, piers, and pilasters), if such architectural elements meet the minimum offset requirements of this requirement.

b) Article 6.5(F)(7)(b) Roof Design; Flat Roofs: Flat roofs shall comply with the following:

- i. Flat roofs are permitted if edged by a parapet wall with an articulated, three-dimensional cornice or moulding.
- ii. Parapet walls shall be fully integrated into the architectural design of the building to create seamless design transitions between the main building mass and roof-mounted architectural elements (which may include screening elements for roof mounted equipment)

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<sup>5</sup> Chapter 12 of the UDO defines “Building Façade” as “[t]hat portion of any exterior elevation on a building extending from grade to top of the parapet, wall, or eaves and the entire width of the building elevation.”

- iii. Modulation or variation of the roofs and/or roof lines shall be required in order to eliminate the appearance of box-shaped buildings.
  - iv. Flat roofs shall be prohibited for one-story buildings in the LB: Local and Neighborhood Business District, unless otherwise approved by the Plan Commission or Director after consideration of the building architecture, building context, and sensitivity to the residential character of the area.
- c) Article 6.5(F)(11) Gasoline Service Station Canopies (determined by the Department to apply to this use based on the design and automobile orientation):
- i. Height: In order to reduce the visual impact of the canopy structure and corresponding lighting, the maximum height of the canopy clearance shall be sixteen (16) feet and the maximum top of the canopy shall be twenty-two (22) feet. The maximum width of the canopy fascia shall be thirty (30) inches.
  - ii. Roof Design: A canopy shall include a pitched or sloped roof between 5:12 and 10:12, and with a minimum roof height above the canopy fascia of two and one half (2.5) times the width of the canopy fascia.

The petitioner has requested Variances of Development Standard for these standards to not apply to the proposed detached canopy structure. The canopy would otherwise comply with the applicable standards, including building materials.

### **Variance #3: Landscaping Standards**

The existing improvements on the property are Legal Nonconforming<sup>6</sup> and are permitted to continue to exist; however, the proposed improvements would be required to comply with the standards of the UDO that are in effect today. As a result, the portion of the property impacted by the proposed detached canopy structure (the "Construction Limits") would be subject to Perimeter Parking Area Landscaping and Foundation Planting requirements, as summarized below:

#### **Article 6.8(L)(2) and (4) Landscaping Standards; Foundation Plantings:**

- a) Plant materials shall be required intermittently (approximately every forty (40) feet) against long expanses (over eighty (80) feet) of Building Facades, fences, and other barriers to create a softening effect.
- b) Plantings shall be located within fifteen (15) feet of the Building Facade, fence or other barrier being softened, and shall occur within planting beds at least eight (8) in width.

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<sup>6</sup> Article 9.2(B) of the UDO explains that "Legal nonconforming is different than illegal nonconforming because a legal nonconforming property is caused by an amendment to this Ordinance, not as a result of a change to the property, that has resulted in the property no longer conforming to the policies and standards of the applicable Zoning District. When this situation occurs, then the property is deemed legal nonconforming and shall be subject to the terms of this Article."

Article 6.8(O)(2) Landscaping Standards; Parking Area Landscaping; Perimeter Parking Area Landscaping:

- c) Application: Perimeter landscaping is required for Parking Areas with ten (10) or more spaces where the Parking Area<sup>7</sup> is located within: (i) an Established Front Yard; (ii) a required Yard; or (iii) twenty (20) feet of a Lot Line or Right-of-way line.
- d) Design: Perimeter Parking Area landscaping shall be a minimum of five (5) feet wide and shall extend along the perimeter of Parking Areas and include:
  - i. A minimum of one (1) tree per thirty (30) linear feet of Parking Area length. Trees may be clustered in an aesthetically pleasing manner.
  - ii. A minimum of one (1) shrub per three (3) feet of Parking Area length. Shrubs may be clustered in an aesthetically pleasing manner.
  - iii. Grass or other permitted Groundcover for areas not planted with trees or shrubs.
- e) Drive Aisles: Plantings within perimeter Parking Area landscape areas between drive aisles and a Rear or Side Lot Line may be reduced by up to fifty percent (50%) of the required plantings above, if no Parking Spaces are located between the Lot Line and the drive aisle.

The detached canopy structure would be subject to the above landscaping along the north Lot Line (Side Yard) as it abuts the Construction Limits; however, only six (6) inches currently exist between the existing pavement and north Lot Line, and this is not proposed to change as a result of the proposed improvements. As a result, a Variance of Development Standard is requested for the Perimeter Parking Area Landscaping standards to not apply to the proposed detached canopy structure.

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**PROCEDURAL**

Public Notice: The Board of Zoning Appeals is required to hold a public hearing on its consideration of a Variance of Development Standard. This petition is scheduled to receive its public hearing at the June 14, 2016, Board of Zoning Appeals meeting. Notice of the public hearing was properly advertised in accordance with Indiana law and the Board of Zoning Appeals' Rules of Procedure.

Conditions: The UDO<sup>8</sup> and Indiana law provide that the Board of Zoning Appeals may impose reasonable conditions and limitations concerning use, construction, character, location, landscaping, screening, and other matters relating to the purposes and objectives of the UDO

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<sup>7</sup> Chapter 12 of the UDO defines "Parking Area" as "[a]ny public or private land area designed and used for parking more than four (4) motor vehicles, and shall include garages, Driveways, Parking Spaces, drive aisles and areas of Streets legally designated for parking."

<sup>8</sup> Article 10.14(I) Processes and Permits; Variances; Conditions of the UDO.

upon any Lot benefited by a variance as may be necessary or appropriate to prevent or minimize adverse effects upon other property and improvements in the vicinity of the subject Lot or upon public facilities and services. Such conditions shall be expressly set forth in the order granting the variance.

**Acknowledgement of Variance:** If the Board of Zoning Appeals approves this petition, then the UDO<sup>9</sup> requires that the approval of the variance shall be memorialized in an acknowledgement of variance instrument prepared by the Department. The acknowledgement shall: (i) specify the granted variance and any commitments made or conditions imposed in granting of the variance; (ii) be signed by the Director, Property Owner and Applicant (if Applicant is different than Property Owner); and (iii) be recorded against the subject property in the Office of the Recorder of Hamilton County, Indiana. A copy of the recorded acknowledgement shall be provided to the Department prior to the issuance of any subsequent permit or commencement of uses pursuant to the granted variance.

**Variances of Development Standard:** The Board of Zoning Appeals shall approve or deny variances from the development standards (such as height, bulk, or area) of the underlying zoning ordinance. A variance may be approved under Indiana Code § 36-7-4-918.5 only upon a determination in writing that:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and
3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the subject property.

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**DEPARTMENT COMMENTS:**

**The Department recommends the Board motions and votes separately for each separate Variance of Development Standard.**

**Approval:** If the Board is inclined to approve the variances, then the Department recommends approval with the findings for each variance as set forth below:

**Variance #1:** Petitioner requests a Variance of Development Standard from Article 6.1(D) to reduce the Minimum Setback Line for the Side Yard for a detached canopy structure from fifteen (15) feet to six (6) inches.

**Variance #2:** Petitioner requests Variances of Development Standard from Article 6.3(F)(5)(a) and (b) Building Elevations, Article 6.5(F)(7)(b) Roof Design, and Article

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<sup>9</sup> Article 10.14(K) Processes and Permits; Variances; Acknowledgement of Variance of the UDO.

6.5(F)(11) Gasoline Service Station Canopies to not apply to the proposed detached canopy structure.

**Variance #3:** Petitioner requests Variances of Development Standards from Article 6.8(L) Foundation Plantings and Article 6.8(O)(2) Perimeter Parking Area Landscaping to not apply to the proposed detached canopy structure.

**Recommended Findings for Approval:** If the Board is inclined to approve the variance, then the Department recommends the findings as set forth below, for each variance:

- 1) *The approval will not be injurious to the public health, safety, morals, and general welfare of the community:*

**Finding:** It is unlikely that approving the requested variance would be injurious to the public health, safety, morals, and general welfare of the community because the existing use and proposed improvements will otherwise comply with the applicable standards of the SB-PD District.

- 2) *The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:*

**Finding:** It is unlikely the use and value of adjacent property will be affected in a substantially adverse manner. The proposed variance should not have a negative impact on surrounding properties because: (i) the existing and proposed improvements enhance the value of the subject property; (ii) the parcel will otherwise comply with or exceed the applicable standards of the SB-PD District; and (iii) the approval of the variance will allow for the continued use and improvement of the property in a manner substantially consistent with the quality and character of the surrounding area and Comprehensive Plan.

- 3) *The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the subject property:*

**Finding:** Strict adherence to the zoning ordinance would result in the inability to improve the property, as proposed, in accordance with the Unified Development Ordinance. The use is permitted by the Unified Development Ordinance and the existing improvements and parcel would otherwise be permitted and comply with the Unified Development Ordinance.